

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 12,682

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Appeal of)

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INTRODUCTION

The petitioner appeals a decision of the Department of Social Welfare requiring the inclusion of her husband in her Food Stamp household and requiring her to repay Food Stamp and ANFC amounts which were overpaid to the household through the recoupment of currently paid benefits. The petitioner has also raised the validity of the Department's decision to disqualify her husband from the receipt of Food Stamp benefits due to a fraud conviction.

FINDINGS OF FACT

The facts in this matter have been agreed to by the parties and are as follows:

1. The petitioner is a thirty-year-old woman with an eighth grade education. Her household consists of her two small children and her husband who is an SSI recipient. The petitioner and her husband received both ANFC and Food Stamp benefits in Vermont from at least September of 1989 until June of 1992, when the family moved out of state for a time. In September of 1993, the petitioner returned to Vermont and applied for and received ANFC and Food Stamp benefits as the head of her household.
2. In January of 1993, the petitioner's husband was convicted of two counts of welfare fraud after a trial, based on his failure to report income and on his report of false information regarding members of his household, during the period from September of 1989 through June of 1991. At the sentencing hearing on February 25, 1993, the judge heard a request from the State's Attorney to order restitution of the amounts fraudulently obtained, but the request was denied. The petitioner's husband received a prison sentence as a result of his conviction which he began serving sometime after February 25, 1993. He returned to his wife's household upon his release from prison on October 27, 1993.
3. On March 4, 1994, the Department sent the petitioner a notice proposing to recoup ANFC and Food Stamp amounts which the Court found were overpaid to her household as a result of the fraud conviction. She appealed that notice. On April 19, 1994, she was sent three corrected notices. The first notice informed her that a review of her ANFC case had found that she had received \$3,248.00 in ANFC benefits from September 16, 1990 through August 27, 1991 to which she was not entitled. The reason for the overpayment was listed as her failure to report income to the household, which had been "upheld by a conviction of felony Welfare fraud in Bennington District Court." The second notice informed her

that it had been determined that the petitioner or her household received \$3,235.00 in Food Stamp benefits from September 1990 through August of 1991 which she was not entitled to receive because "the Department did not receive correct, complete or timely information from you." Both notices advised the petitioner that federal law required repayment of the overpayment and gave a variety of methods for repayment. Failure to respond to either notice would result in an assumption by the Department that repayment would occur through monthly recoupment of some of the currently paid benefits. The petitioner was notified that she would get further notification of the amount to be reduced before that action was taken with regard to her ANFC or Food Stamps. The third notice informed the petitioner that ten percent of her ANFC grant would be recouped (\$61.00) on a monthly basis to recover the \$3,248.00 overpayment and that her Food Stamps would be reduced by \$20.00 per month to recover the \$3,235.00 overpayment. She was also notified that her Food Stamp benefit would decrease by another \$80.00 per month because her husband had been disqualified from receiving benefits for six months due to the welfare fraud conviction, thereby reducing her eligible household members from four to three.

4. For purposes of this hearing alone, the petitioner agrees that the household of which she was an adult member received \$3,235.00 more in Food Stamps and \$3,248.00 more in ANFC benefits than it should have received from September of 1990 through August of 1991. The petitioner brings this appeal solely on her own behalf and not on her husband's behalf. He is not a party and neither she nor her attorney represents him. The Department agrees that the petitioner herself was not prosecuted for fraud nor was she administratively disqualified from receiving Food Stamp benefits based on an intentional program violation.

ORDER

The Department's determination that the petitioner was overpaid ANFC and Food Stamp benefits and that she is liable for repayment is affirmed. The petitioner's appeal of her husband's disqualification from receiving Food Stamp benefits is dismissed because she lacks standing to raise that claim.

REASONS

The Department's Food Stamp regulations, which follow the federal Food Stamp regulations, specifically require the Department to recover overpaid benefits from any and all adult members of the overpaid household:

All adult household members shall be jointly and severally liable for the value of any over issuance of benefits to the household. The State agency shall establish a claim against any household that has received more Food Stamp benefits than it is entitled to receive or any household which contains an adult member who was an adult member of another household that received more Food Stamp benefits than it was entitled to receive.

F.S.M. § 273.18(a)

The petitioner in this case was indisputably an adult member of the household which received the over issuance of benefits from September of 1990 to August of 1991. She is now an adult member (and head) of another household (containing all of the same members) that receives Food Stamp benefits. In that situation, the Department is required by the above regulation to establish a claim for recoupment of benefits against her household.

As the petitioner has not been found guilty of intentionally violating program rules, and as the overpayment was not the result of administrative error, a claim must be made against her on the basis of inadvertent household error. F.S.M. § 273.18(a)(1). The corrected notice sent to the petitioner on April 19, 1994 indicates that a claim is being made against her on the basis of incorrect information supplied by her, a category which embraces the intentional as well as the unintentional. Some of the confusion in this matter seems to have arisen from the petitioner's belief that the claim was being established, and wrongfully so, based upon an attribution of her husband's guilt to her. That belief was certainly fueled by the Commissioner's review letter dated April 21, 1993, which stated that Food Stamp recoupment was proposed against her because her husband was convicted by a jury of Food Stamp fraud.

The Commissioner's letter would have been more accurate if it had stated that the overpayment was being established against the petitioner based on a finding by the Court in her husband's fraud trial that the household had received benefits to which it was not entitled. The real regulatory basis for the establishment of this claim against her would have been clear: her receipt of Food Stamp benefits to which she was not entitled based on her presence in a household which was overpaid due to errors in reporting its income and composition. One member of her household was accused and convicted of intentionally misrepresenting that information. His criminal guilt does not infect the other members of the household but the finding that the household was overpaid does affect other household members.

In order to establish a claim against the petitioner, the Department has the burden of showing that she was an adult member of a household that was overpaid benefits. Had the petitioner contested the existence of or amount of the over issuance, the Department would have been put to its proof on those issues. Quite possibly the overpayment to the household could have been proved by the Department through the introduction of the Court's findings with regard to the overpayment in her husband's felony trial. It is very likely that the Board would have been collaterally estopped from finding different facts on the payments made to the household and the amounts for which they were actually eligible. See Fair Hearing No. 12.309. However, as the petitioner agreed to the existence and the amount of the overpayment, it was not necessary for the Department to take that step.

The petitioner argues that even if the regulations allow recoupment of overpaid amounts against her, the Department is barred from attempting to establish a claim for recovery against her by the criminal court's denial of the State's request for reimbursement from her husband. The Board has heard similar arguments in Fair Hearing Nos. 4,513, 10,442, and 11,263 and rejected them. While those cases were slightly different--two concerned a stipulated Court order under a nolo plea in which restitution was not sought and no Court order was made (Fair Hearing No. 4513 and 10,442) and a third concurred a Court order for restitution in a lesser amount than the entire overpayment (11,263)--the same principles which formed the basis for those decisions should operate here. The Board noted in those decisions that two distinct remedies exist in the statute for recovering stolen benefits: the first provides for fines up to twice the amount of the wrongfully paid benefits via a court order in a criminal action (33 V.S.A. § 143(a)(3); the second allows the Commissioner to recoup amounts of ongoing assistance from convicted persons as allowed by law (33 V.S.A. § 143(b). It was the Board's opinion that barring the second remedy would probably require some specific statement from a judge disallowing that remedy and some agreement by the State's Attorney that it was representing the interests of the Commissioner of Social Welfare so that she could be a party bound by the order. See Fair Hearing 4,513, pages 5 and 6. The Board has consistently concluded that a Court's order on "restitution" in the criminal context does not alter the Commissioner's right under 33 V.S.A. § 143(b) to recoup from ongoing A.N.F.C. or Food Stamp benefits wrongfully obtained by the convicted person. See Fair Hearing No. 11,263, p. 3. It cannot be concluded that the Commissioner's statutory right to deduct overpaid amounts from future benefits was

an issue that was at all before the criminal court so that collateral estoppel would apply. See Trepanier v. Getting Organized, Inc., 155 Vt. 259 (1990).

Even if this analysis is incorrect, and the Court order could be construed as barring further recovery of these benefits, as the petitioner asserts, that order would only protect the petitioner's husband from recoupment, not the petitioner. She was not a party to the criminal proceeding or in privity with a party in the proceeding, an element necessary to collaterally estop the Department from further collection under the criteria set forth by the Court in Trepanier, id. at 265. The Department still has the right under the federal and state regulations cited above to recover benefits from her as the recipient of benefits to which she was not entitled, even if she did not commit fraud to get them.

As the existence and amount of the overpayment are established, the Department has the right and obligation to recover the overpaid amounts from the petitioner.⁽¹⁾ The petitioner has received a valid demand letter to which she had the right to respond within thirty days. The letter proposing the recoupment amounts should not have been sent simultaneously. Since it has been determined that the Department's claim is valid, the petitioner should have thirty days from the date of this decision to respond to the Department with regard to the method of overpayment. If she does not respond in that time, the Department has the authority to initiate recoupment from her current allotment. F.S.M. § 273.18(d)(4).

The analysis with regard to the ANFC recoupment is similar to the one above. Those regulations provide that:

Overpayments of assistance, whether resulting from administrative error, client error or payments made pending a fair hearing which is subsequently determined in favor of the Department, shall be subject to recoupment. Recovery of an overpayment can be made through repayment by the recipient of the overpayment, or by reducing the amount of payment being received by the ANFC group of which he is a member.

...

If the individual responsible for the overpayment is no longer eligible or moves to another assistance group, recovery shall be either from that individual, the original assistance group, the new assistance group or both, at the Department's option as determined by the District Director.

W.A.M. § 2234.2

Under the above regulation, an overpaid amount must be recovered through recoupment of benefits. These amounts can be recovered from the recipient of the overpaid amounts regardless of whether that recipient is the individual responsible for the overpayment and even if the person responsible for the overpayment leaves the assistance group. In this matter, the petitioner was one of the recipients of overpaid ANFC benefits and continues to be a member of the original assistance group which received the benefits. The fact that her husband, who appears to be the individual responsible for the overpayment, is no longer a part of the assistance group, does not bar the Department from establishing a claim and recouping from benefits currently received by the remaining members of the assistance group. That group received benefits to which it was not entitled and under the regulations is liable to give that money back through recoupment.

The petitioner argues that the above regulation is in conflict with the federal statute which she interprets as barring recoupment from her. That statute provides, in pertinent part:

[A State plan shall] provide that the State agency will promptly take all necessary steps to correct any overpayment or underpayment of aid under the State plan, and, in the case of--

(A) an overpayment to an individual who is a current recipient of such aid (including a current recipient whose overpayment occurred during a prior period of eligibility), recovery will be made by repayment by the individual or by reducing the amount of any future aid payable to the family of which he is a member, except that such recovery shall not result in the reduction of aid payable for any month, such that the aid, when added to such family's liquid resources and to its income (without application of paragraph (8)), is less than 90 percent of the amount payable under the State plan to a family of the same composition with no other income (and, in the case of an individual to whom no payment is made for a month solely by reason of recovery of an overpayment, such individual shall be deemed to be a recipient of aid for such month);

(B) an overpayment to any individual who is no longer receiving aid under the plan, recovery shall be made by appropriate action under State

law against the income or resources of the individual or the family;

...

42 USCS § 602(22)

The petitioner argues that section (B) above requires

that the Department collect the overpayment only against the petitioner's husband as an individual who is no longer receiving aid under the plan and not against the petitioner. The petitioner's argument, however, does not delve into the definition of an overpaid individual or consider that there may be more than one overpaid individual in an assistance group. The ANFC regulations cited above clearly consider all members of an assistance unit individuals subject to a claim of overpayment and recoupment. In that instance, the Department is required under the federal statute to recover both from overpaid individuals who are current recipients of aid through recoupment and from individuals who are no longer receiving aid through the processes of state law.⁽²⁾

It cannot be concluded that the statute imposes any bar to a recoupment action against the petitioner who is herself an overpaid (if innocent) individual. In fact, the federal

regulations promulgated pursuant to this statute take just such an alternative approach.⁽³⁾

The final issues raised by the petitioner are whether her husband must be included in her Food Stamp household and whether he should be disqualified from receiving benefits based on his fraud conviction. The Food Stamp regulations clearly require the spouse of any member of a Food Stamp household to be included as a member of the household regardless of his own disability or the fact that he may not eat food with the rest of the household. See. F.S.M. § 273.1(2)(i)(A). The petitioner points to no provision

which would exclude her spouse from inclusion in the household group. Therefore, it was proper for the Department to include his income when calculating the eligibility and benefit level of the petitioner's household.

The petitioner further argues that her husband should not be in a period of Food Stamp disqualification based on the Board's decision in Fair Hearing No. 12,390. In that decision, the Board decided that the federal regulation allowing a six month disqualification to commence upon the reapplication for Food Stamp benefits rather than immediately following a determination of intentional program violation was in conflict with the federal statute. The Department requests a review of that decision and, in support of that request, offers a federal court decision (Garcia v. Concannon, et al., U.S. Dist. Ct. for Oregon, Civil No. 93-1173-Jo, March 7, 1994.) which had been issued at the time of the Board's decision in Fair Hearing No. 12,390, but which was not brought to the Board's attention at that time.

Without deciding whether it might be appropriate to revisit that issue, it cannot be considered in this case because the petitioner has no standing to raise the issue. The petitioner and her attorney made it very clear from the outset of this hearing that the petitioner "brings this appeal in her own right and she raise no claims or defenses on behalf of her husband. Given that fact, it would not be appropriate to make a decision on whether her husband has been properly disqualified from participation in the Food Stamp program. Unlike the issues regarding recoupment from her household or membership in her household this issue is personal to her husband and affects only his benefits. Allowing an unauthorized person to litigate his rights and obligations with regard to his personal eligibility for benefits is not a sound policy, calls into question the integrity of the appeals process and is probably a violation of the petitioner's husband's rights to due process. Therefore, the petitioner's appeal on this issue should be dismissed as she is not the party in interest. If her husband feels he is aggrieved by the Department's disqualification, he is encouraged to appeal that decision himself.

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1. It appears that the Department discovered the over issuance in September of 1991 since the amount of recovery sought only goes back to September of 1990. The Department's regulations limit its recovery to the twelve month period prior to its discovery of the overpayment. F.S.M. § 273.18(b) and (c)(1)(i). This undoubtedly explains why the Department did not establish a claim back to 1989, the starting date of fraud established by the Court. At some point, the Food Stamp household must have been notified of the overpayment and fraud claim against the petitioner's husband. However, the petitioner as a potentially liable individual was not notified of the claim at that time and there is nothing in the regulations which indicates that the claim against her had to be established at that time. In any event, the petitioner does not raise this issue in her brief.

2. The petitioner's husband, as an SSI recipient, has little in the way of income or resources and is probably "judgment proof" with regard to state court collection activities against him.

3. The federal regulations state that recovery of an overpayment may be made from:

- (1) the assistance unit which was overpaid, or (2) any assistance unit of which a member of the overpaid assistance unit has subsequently become a member, or (3) any individual members of the overpaid assistance unit whether or not currently a recipient.

45 C.F.R. § 233.20(a)(13)(i)(B)

It should be noted as well here that the notice advising the petitioner of a recoupment amount for ANFC, like the Food Stamp notice, is also premature. The proper procedure for establishing recoupment is to first send a notice of claim of overpayment. If the petitioner appeals that notice, as the petitioner did here, all attempts to set up a repayment or recoupment plan should be stopped until a determination has been made by the Board that the Department's claim is valid. At that time, it is appropriate for the Department to propose methods for recovery of the overpayment, including recoupment.